

A bill for an act
relating to elections; preventing candidates in an election from determining
validity of an absentee ballot envelope; changing certain provisions governing
ballot validity and recounts; imposing a penalty; amending Minnesota Statutes
2008, sections 204B.44; 204C.22, subdivision 13; 204C.35, subdivisions 1, 2, by
adding a subdivision; 204C.36, subdivision 1; 206.89, subdivision 3; proposing
coding for new law in Minnesota Statutes, chapter 204C.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 204B.44, is amended to read:

204B.44 ERRORS AND OMISSIONS; REMEDY.

(a) Any individual may file a petition in the manner provided in this section for
the correction of any of the following errors, omissions, or wrongful acts which have
occurred or are about to occur:

~~(a)~~ (1) an error or omission in the placement or printing of the name or description of
any candidate or any question on any official ballot;

~~(b)~~ (2) any other error in preparing or printing any official ballot;

~~(c)~~ (3) failure of the chair or secretary of the proper committee of a major political
party to execute or file a certificate of nomination; or

~~(d)~~ (4) any wrongful act, omission, or error of any election judge, municipal clerk,
county auditor, canvassing board or any of its members, the secretary of state, or any other
individual charged with any duty concerning an election.

(b) The petition shall describe the error, omission, or wrongful act and the correction
sought by the petitioner. The petition shall be filed with any judge of the Supreme Court in
the case of an election for state or federal office or any judge of the district court in that
county in the case of an election for county, municipal, or school district office. The

petitioner shall serve a copy of the petition on the officer, board or individual charged with the error, omission, or wrongful act, and on any other party as required by the court. Upon receipt of the petition the court shall immediately set a time for a hearing on the matter and order the officer, board or individual charged with the error, omission or wrongful act to correct the error or wrongful act or perform the duty or show cause for not doing so. The court shall issue its findings and a final order for appropriate relief as soon as possible after the hearing. Failure to obey the order is contempt of court.

(c) An order issued under this section may not authorize the candidates in an election to determine whether an absentee ballot envelope was improperly rejected.

Sec. 2. Minnesota Statutes 2008, section 204C.22, subdivision 13, is amended to read:

Subd. 13. **Identifying ballot.** If a ballot is marked ~~by distinguishing characteristics in a manner making it evident that the voter intended to identify the ballot~~ with a voter's signature, an identification number, or a name written completely outside of the space allotted for the names of write-in candidates, the entire ballot is defective.

Sec. 3. Minnesota Statutes 2008, section 204C.35, subdivision 1, is amended to read:

Subdivision 1. ~~Automatic~~ Required **recounts.** (a) In a state primary when the difference between the votes cast for the candidates for nomination to a statewide federal office, state constitutional office, statewide judicial office, congressional office, state legislative office, or district judicial office:

(1) is less than ~~one-half~~ one-quarter of one percent of the total number of votes counted for that nomination; or

(2) is ten votes or less and the total number of votes cast for the nomination is 400 votes or less;

and the difference determines the nomination, the canvassing board with responsibility for declaring the results for that office shall manually recount the vote upon receiving a written request from the candidate whose nomination is in question. Immediately following the canvassing board meeting of the board that has responsibility for canvassing the results of the nomination, the filing officer must notify the candidate that the candidate has the option to request a recount of the votes at no cost to the candidate. This written request must be received by the filing officer during the time for notice of contest of the primary for which a recount is being sought.

(b) In a state general election when the difference between the votes of a candidate who would otherwise be declared elected to a statewide federal office, state constitutional

office, statewide judicial office, congressional office, state legislative office, or district judicial office and the votes of any other candidate for that office:

(1) is less than ~~one-half~~ one-quarter of one percent of the total number of votes counted for that office; or

(2) is ten votes or less if the total number of votes cast for the office is 400 votes or less,

the canvassing board shall manually recount the votes upon receiving a written request from the candidate whose nomination is in question. Immediately following the canvassing board meeting of the board that has responsibility for canvassing the results of the general election, the filing officer must notify the candidate that the candidate has the option to request a recount of the votes at no cost to the candidate. This written request must be received by the filing officer during the time for notice of contest of the election for which a recount is being sought.

(c) A recount must not delay any other part of the canvass. The results of the recount must be certified by the canvassing board as soon as possible.

(d) Time for notice of a contest for an office which is recounted pursuant to this section shall begin to run upon certification of the results of the recount by the canvassing board.

~~(e) A losing candidate may waive a recount required pursuant to this section by filing a written notice of waiver with the canvassing board.~~

Sec. 4. Minnesota Statutes 2008, section 204C.35, subdivision 2, is amended to read:

Subd. 2. **Discretionary candidate recount.** (a) A losing candidate whose name was on the ballot for nomination or election to a statewide federal office, state constitutional office, statewide judicial office, congressional office, state legislative office, or district judicial office may request a recount in a manner provided in this section at the candidate's own expense when the vote difference is greater than the difference required by ~~this section~~ subdivision 1. The votes shall be manually recounted as provided in this section if the candidate files a request during the time for filing notice of contest of the primary or election for which a recount is sought.

(b) The requesting candidate shall file with the filing officer a bond, cash, or surety in an amount set by the filing officer for the payment of the recount expenses. The requesting candidate is responsible for the following expenses: the compensation of the secretary of state, or designees, and any election judge, municipal clerk, county auditor, administrator, or other personnel who participate in the recount; the costs of computer operation, preparation of ballot counting equipment, necessary supplies and travel

related to the recount; the compensation of the appropriate canvassing board and costs of preparing for the canvass of recount results; and any attorney fees incurred in connection with the recount by the governing body responsible for the recount.

(c) The requesting candidate may provide the filing officer with a list of up to three precincts that are to be recounted first and may waive the balance of the recount after these precincts have been counted. If the candidate provides a list, the recount official must determine the expenses for those precincts in the manner provided by paragraph (b).

(d) If the winner of the race is changed by the optional recount, the cost of the recount must be paid by the jurisdiction conducting the recount.

(e) If a result of the vote counting in the manual recount is different from the result of the vote counting reported on election day by a margin greater than the standard for acceptable performance of voting systems provided in section 206.89, subdivision 4, the cost of the recount must be paid by the jurisdiction conducting the recount.

Sec. 5. Minnesota Statutes 2008, section 204C.35, is amended by adding a subdivision to read:

Subd. 4. **Filing officer.** For the purposes of this section, the secretary of state is the filing officer for candidates for all federal offices and for state offices voted on in more than one county. The county auditor is the filing officer for state offices voted on in only one county.

Sec. 6. Minnesota Statutes 2008, section 204C.36, subdivision 1, is amended to read:

Subdivision 1. **Required recounts.** (a) Except as provided in paragraph (b) and (c), a losing candidate for nomination or election to a county, municipal, or school district office may request a recount of the votes cast for the nomination or election to that office if the difference between the vote cast for that candidate and for a winning candidate for nomination or election is less than ~~one-half~~ one-quarter of one percent of the total votes counted for that office. In case of offices where two or more seats are being filled from among all the candidates for the office, the ~~one-half~~ one-quarter of one percent difference is between the elected candidate with the fewest votes and the candidate with the most votes from among the candidates who were not elected.

(b) A losing candidate for nomination or election to a county, municipal, or school district office may request a recount of the votes cast for nomination or election to that office if the difference between the votes cast for that candidate and for a winning candidate for nomination or election is less than one-half of one percent, and the total number of votes cast for the nomination or election of all candidates is more than 400

but less than 25,000. In cases of offices where two or more seats are being filled from among all the candidates for the office, the one-half of one percent difference is between the elected candidate with the fewest votes and the candidate with the most votes from among the candidates who were not elected.

~~(c)~~ A losing candidate for nomination or election to a county, municipal, or school district office may request a recount of the votes cast for nomination or election to that office if the difference between the vote cast for that candidate and for a winning candidate for nomination or election is ten votes or less, and the total number of votes cast for the nomination or election of all candidates is no more than 400. In cases of offices where two or more seats are being filled from among all the candidates for the office, the ten vote difference is between the elected candidate with the fewest votes and the candidate with the most votes from among the candidates who were not elected.

~~(e)~~ ~~(d)~~ Candidates for county offices shall file a written request for the recount with the county auditor. Candidates for municipal or school district offices shall file a written request with the municipal or school district clerk as appropriate. All requests shall be filed during the time for notice of contest of the primary or election for which a recount is sought.

~~(d)~~ ~~(e)~~ Upon receipt of a request made pursuant to this section, the county auditor shall recount the votes for a county office at the expense of the county, the governing body of the municipality shall recount the votes for a municipal office at the expense of the municipality, and the school board of the school district shall recount the votes for a school district office at the expense of the school district.

Sec. 7. **[204C.363] CANDIDATE REPRESENTATIVES.**

Subdivision 1. Requirements of representatives. Individuals acting as candidate representatives in a recount must be registered voters in Minnesota, must provide written authorization from the candidate to the recount official before being allowed to challenge a ballot, and may not challenge a ballot until they have successfully completed training provided by the recount official. Only one representative per candidate per precinct being recounted simultaneously is allowed in the area of the room in which the recount is taking place.

Subd. 2. Obstructing recount; violations; penalty. The recount official may instruct any candidate or candidate's representative who obstructs or interferes with the recount to leave the room in which the recount is taking place. Any candidate or candidate's representative who obstructs or interferes with the conduct of a recount or who violates any provision of this section is guilty of a petty misdemeanor.

6.1 Sec. 8. Minnesota Statutes 2008, section 206.89, subdivision 3, is amended to read:

6.2 Subd. 3. **Scope and conduct of review.** The county canvassing board shall appoint
6.3 the postelection review official as defined in subdivision 1. The postelection review must
6.4 be conducted of the votes cast for president or governor; United States senator; and United
6.5 States representative, except that a review of a race must not be conducted if that race is
6.6 subject to an automatic recount under section 204C.35. The postelection review official
6.7 may conduct postelection review of the votes cast for additional offices.

6.8 The postelection review must be conducted in public at the location where the
6.9 voted ballots have been securely stored after the state general election or at another
6.10 location chosen by the county canvassing board. The postelection review official for
6.11 each precinct selected must conduct the postelection review and may be assisted by
6.12 election judges designated by the postelection review official for this purpose. The party
6.13 balance requirement of section 204B.19 applies to election judges designated for the
6.14 review. The postelection review must consist of a manual count of the ballots used in the
6.15 precincts selected and must be performed in the manner provided by section 204C.21.
6.16 The postelection review must be conducted in the manner provided for recounts under
6.17 section 204C.361 to the extent practicable. The review must be completed no later
6.18 than two days before the meeting of the state canvassing board to certify the results of
6.19 the state general election.